

# A Short ANSWER to a Paper, Intituled,

Reasons humbly offered to the Honourable the Commons Assembled in Parliament, against a Bill brought in by Sir Robert Killigrew, and Others, Undertakers and Participants for the pretended Dreining of *Lindsey-Level*, in *Lincolnshire*.

I Should need only to say, That the Journals of both Houses of Parliament, and the Papers now in the custody of the Clerk of the House of Commons, will prove the notorious false Allegations alledged in the said Papers.

Secondly, That by such Allegations, our Adversaries only endeavour to hinder the Case to be fairly Tried at the Bar of this Honourable House, the Concurrence of which we have always had, when Heard, and never had a Repulse, but by Tricks and Delays of a few Self-interested Men, who call themselves the Country.

Thirdly, I do affirm the Veracity of the following CASE; and on a Fair and Timely Hearing, our Adversaries will have just cause to Blush at their False Allegations, and illegal Robbing us of our Lawful Estates; which, if tolerated, will make a large Gap in the Liberty and Property of this Nation.

Fourthly, I have so great a Veneration for my Country, and their Representatives, that I rely entirely on their Justice; and that we, the Dreiners and Participants of *Lindsey-Level*, shall not be Condemned on such false Allegations, but be fairly Heard.

Fifthly, If this Honourable House do think the Time short, through the multiplicity of Business, and that our Adversaries have not Time to Summon the pretended Country; we will, with all Humility and Respect, agree with our Opposers, to begin a-new with our Pretensions, the next Meeting of Parliament; so that they may not pretend any Surprise, but be ready to Prove what they so unjustly Pretend. This, with Submission, by

WILLIAM KILLIGREW.

*The late Earl of LINDSEY's Title, by which himself and his Participants do Claim Four and Twenty Thousand Acres of Land, in the Fenns in Lincolnshire; and concerning which, a Bill is now with this Honourable House, to Impower Sir Robert Killigrew, Henry Heron, Thomas Wyndham, Wiliam Killigrew, and Edward Heron, to Settle and Repair their Destroyed Works: And they do Declare, All in this following Paper is True.*

FIRST, We Claim by the Law, and Authority of several Decrees of Sewers.

Secondly, We claim the same Equity that former Parliaments have afforded to such Undertakings, we having in this expended near 80000 l. to the very great Baefit of this Kingdom.

That Commissioners of Sewers were anciently part of the Commission of Oyer and Terminer.

That they were Issuable at the King's Pleasure, and that the King (as he who had the Supreme care of things of Publick Concernment) was bound to grant such Commissions upon all Emergencies.

That this was the constant Opinion, we find in our Ancientest Book of Common-Law. That it was a common Practice, we find many such Commissions issued, two especially, long before any Statutes now known in England were made; they were both sent into *Lincolnshire*, and the first into thery parts where the Earl made his Works, and it that time to have done this very Work that the Earl hath now done.

But because those Commissions were Temporary, to Persons sometimes Strangers in the place, and ordinarily in redress of mischiefs already happened by some former Inundation, one Statute have from time to time enlarged the Power of Commissions, to act as well in Prevention as Redress; and appointed those Commissions to Gentlemen, living on or near the place, who by their timely Notice might prevent, and their Authorities were made constant for certain number of Years.

The first Statute to this purpose we find in *Henry the Third's* time, which is as ancient as any Statute now known in England; very many subsequent Statutes have enlarged their Powes in such Particulars, as in experience they found necessary, viz. To enable them to Tax all Lands which might recere benefit, or avoid loss; to make new Dreins, if they, upon their view and observation, found the ancient ones were not sufficient; to distrain and sell, for not payment of those Taxes; or in their discretion, to discharge such Lands perpetually, or to sell them for Years, or Lives in Tail, or in Fee.

And because the Commissioners were Gentlemen of the Count, not ever so intelligent in every scruple of Law, it is by later Statutes provided, That their Decrees shall not be examinable but in Parliament, as divers heretofore have been: but those Parliaments never avoided them, if they found the course taken by their Commissioners might probably do the work, though it was not yet really done. But on the contrary, rather than lose the benefit that might thereby accrue to the State (although those Commissioners might in some thing have erred in judgment) they did confirm their Decrees, and sometimes better the Contract in behalf of the Undertakers, as they did *Tindal's Law Lovell's Law*, &c.

That those Lands undertaken by the Earl of *Lindsey*, were hurriedly surrounded in *Henry the Fifth's* time, appears by Presentments at a Session of Sewers at that time.

That the Earl hath pursued the most effectual course in doing the work, appears by Acts of Sewers, at a Session at *Donington*, before *Charles Brandon*, Duke of *Suffolk*, and many more Eminent Men in 34 H. 8. who decreed the making of new Dreins in the very same place, and the same Out-Falls to the Sea, that the Earl hath done; only the Earl hath made the same, and some more, and much more capacious; and that the Commissioners then laid the Tax generally, as the Commissioners now laid this last, before their Contract with the Earl.

That upon great Complaint of the Inhabitants, at a Session of Sewers at *Sempringham*, 8 Eliz. before the Earl of *Lincoln*, Lord High admiral of England, and many more, a general Tax was laid for the Repairing and Enlarging Dreins to carry away Waters that in those Fenns then annoyed them.

At another Session, 17 Eliz. at *Swinstead*, upon the Complaint of the Country, That they were then more drowned than formerly; the Commissioners then decreed the making sub Dreins as the Duke of *Suffolk* and others had decreed in *Henry the Eighth's* time, and such as the Earl himself hath since made; and they then laid a Tax upon the same Lands, but it was not paid; and so nothing was done.

At *Bourne*, in 6 Jac. the Commissioners, upon their view of the great Inundations that time, laid a general Tax for some Works in the said Fenns.

But about the 5 *Car. primi*, Sir *Anthony Ibbi*, Sergeant *Callis*, and other Commissioners of Sewers, and of the Peace, then finding all former Attempts fruitless, by reason the Inhabitants would never pay the Taxes, nor the Lands, by reason of the Surrounder, had no Cattel upon them to render Distress, and well understanding that the King was bound, as is express'd in the Preamble of all Statutes of Sewers, to give direction to Works of this nature and necessity: Those Commissioners, we say, upon those Considerations, did, by their Letters, remonstrate to the then King, the necessities and Profits of Dreining this Land, and beseech'd his Majesty to recommend some Person of Honour to contract with them as Undertaker; the King was pleased to recommend the Earl of *Lindsey*; however, before they made any Contract with the Earl, they yet laid another Tax of 13 s. 4 d. per Acre, at a Session at *Sleaford* of 35 Commissioners, many of them Lords and Owners, and prime Gentlemen of the Country; and after three years expectancy of that, and little or none paid, Then, 11 *Car. primi*, left their Endeavours should have been as fruitless as formerly, at a publick Session of Sewers, and in a general Assembly of Lords, Owners and Commoners, where were 32 Commissioners; many Lords and Owners of the said Fenns, after many Proposals and Refusals, it was fully agreed, and a perfect Contract made with the said Earl, That the said Earl should have as a Reward for Dreining all between *Bourne* and *Lincoln*, 24000 Acres; and as soon as he should have finish'd that part between *Bourne* and *Kime*, &c. he should have 14000 Acres, as a proportionable part for so much to be put into his possession, when by the Commissioners it should be adjudged dreined, and this Contract and Decree was confirmed by the Royal Assent, and enrolled in Chancery.

The Earl applied himself to the Work, and 12 *Car. primi*, at a Session at *Boston*, the Commissioners being 24, appor-tioned his part out of each particular Fenn.

At a Session at *Bourne*, 13 *Car. primi*, 10 Commissioners ascertain'd the place where his proportion in every Fenn should lie.

This Law was after confirmed, 14 *Car. primi*, at *Sleaford*, by 18 Commissioners, with the Royal Assent inrolled in Chancery.

After, in the same Year, by 19 Commissioners it was viewed entirely upon the Place, after at a Session at *Sleaford*, the said Commissioners did decree the Possession to the Earl; to which Decree also was the Royal Assent inrolled in Chancery.

After which, the Earl did enclose it, build and inhabit it, plant, plow, sow, and reap near three Years, till about the beginning of the late Troubles, riotous People violently entred and destroyed his Plantations and Corn then growing, pulled down his Houses, destroyed the Dreins, and hath ever since held the Possession.

1. By the Records above mentioned, it is evident, that these Fenns in question, have been for 200 years hurtfully surrouned, and the constant endeavours of that Country to have dreined them, but could not effect it, until the Earl of *Lindsey* did the work.

2. By the Countries Letter to the King, it is clear, they called for an Undertaker; and by the Earl's Reception, Treaty, and Contract, in three years time, (non dissenting) 'tis clear, he was not imposed on them, but kindly received and invited by the Country with a general consent.

3. By the Country not paying their Tax of a Mark an Acre in three years time given, though from six months to six months, during that three years Treaty, they had still new days appointed for the said payment; by which 'tis evident, that they did not value those Fenny Lands so much worth in those days: Only the Earl of *Lincoln* did pay in his Tax, as the Commissioners appointed, and he had his 300 Acres, for a Mark an Acre, when the Work was done.

It is also evident, that if the Country would have undertook the Dreining, by levying their Taxes, this Undertaking by the Earl had not been: and that no Contract was made, till after three years not payment of the Taxes. Note also, That the Commission of Sewers then in force had 213 Commissioners, the prime Men of the Country, many of them Lords and Owners; and 78 Commissioners of the same Country did Act in our Decrees, to View, to Tax, to Contract, to Adjudge the Work done, and to give Possession of 14000 Acres unto the Dreiners, as the Decrees shew.

5. When the Contract was made, before the Work begun, the Earl declared publicly, That if any of the Lords, Owners, and Commoners, would join with him to adventure in the Works, they should be admitted for Forty Shillings the Acre. But only three would adventure, who were Sir *John Brook*, Lord *Cobham*, Sir *Edward Heron*, and Mr. *William Langton*, who at Forty Shillings the Acre became Adventurers for their own Fenns only; by which 'tis clear, that if the Lords and Owners had desired to be Undertakers, they were not excluded, (as is now pretended, and 'tis as clear, that they did not value those Fenns so much worth before the Undertaking, as they now pretend, or thought the Work too hazardous to venture on; ut now Men do clamour for what their Ancestors did reject, who might have been either Undertakers by paying the Taxes, or Adventurers by joyning with the Earl.

6. By all the Records and Decrees 'tis evident, That all the Commissioners, who were 213. were with the whole Country constantly summoned to appear at every grand Session, from Six Months to Six Months; and 'tis as evident, that at every Session a much greater number of Commissioners than need, did constantly appear and act in this Business; though any Six Commissioners according to the Law of Sewers, (three being of the Quorum) are empowered to act, and there being 78. of the said County, many of them Lords and Owners of the said Fenns, who did act in these Decrees, as the Records do shew and at every Session for the whole Three Years Treaty, many Thousands of the Commoners were continually present; and in all these Three Years time while the Contract was treating, nor at the Contract making, did any one Lord, Owner, or Commoner either desire to be Dreiner, or to oppose the Dreining, or the Undertakers; but many thousands, at the making of the Contract at *Sleaford*, did with great Joy and loud Cries, attend the Earl to his Lodgings; No one Man dissenting of the 32. Commissioners then present, as in the Decree of Sewers is expressed. This we conceive does clearly prove, that the Earl had the unanimous consent of the whole Country, whatsoever now is alleged to the contrary; the Countries kind Compliance at joyful Invitations did encourage the Dreiners to adventure on the Work.

We humbly conceive, That the Earl of *Lindsey*, the Earl of *Lincoln*, the Lord *Cobham*, Sir *Edward Heron*, and Mr. *Langton*, to be Persons of as great Quality, and Estates, and as great Lords of Fenns there, and so may as well be called the Country, as those who now pretend to be Dreiners on that account. But they say, these were Parties and Judges, and so would make it a Crime for any that had Estates in that Country, to be Dreiners in those days; but would now themselves do what they condemn in others; and themselves hope by the merit of abetting those Rioters, who destroyed those publick Works, now to be preferred to the Undertaking, and enjoy the Dreiners Lands, which we have and shall pay Fifty years Purchase for, when our Works are repaired.

8. 'Tis also evident by the Decrees, and by the Dreiners great Houses built, and their 14000. Acres being divided, planted, plowed, sowed, and reaped, for near Three years together, that the Dreiners were in Possession, and their Undertaking fully performed, according to their Contract. It also is as evident by the Dreiners Houses being pulled down, with their Plantations, Corn, and publick Works destroyed, that the Dreiners were thrown out by a Riot which Rioters and their Abettors, have now held the Dreiners Lands for many Years.

9. Since His Majesty's Restauration, the Dreiner Bill hath twice Passed the Lords House, and been sent down to this Honourable House, and there twice Committed, and the Business been fully Heard; and at another Session of the



Parliament, after a full Hearing at a Committee, it was Reported back to the House by Sir Thomas Meers (Chair-man,) where the Business was again (at Sir Charles Hussy's desire) debated at the Bar, and after Counsel fully Heard on both Sides, it was Resolved by the House, to proceed upon the Dreiners Bill, and did proceed on some of the Amendments, but for want of time, the Parliament Prorogued before it could be finished.

10. Sir Charles Hussy (who hath not proved himself more than a Commoner, and we believe could not) put in a Bill in the Name of the Lords and Owners, whose consents he had not.

11. The Dreiners do not claim by Court or Prerogative Power, to have got an Interest in the Fenns in question, (as was scandalously alledged) but do claim their Title by the known Laws of Sewers, according to the ancient and daily practice of 200 Years, as their Records and Decrees do shew, with the Royal Assent enrolled in Chancery; and do justifie, that all their Proceedings were from first to last, according to the best Works of this Nation, which have so much enriched the Kingdom.

12. By the dates of the Deeds of those three above-named Commissioners, it is clear they became Adventurers some Years after the Contract, and so not subject to the scandal of being Parties and Judges, but were as free to adventure in that Work, as for any Member of this Honourable House to Purchase Land after an Act is Passed for the Sale thereof.

13. But if the Experience of our days, do now think to amend the Commission of Sewers: let it be amended, Or if not clearly understood: let it be better explained.

Or if it be found of no use for the good of the Nation: let it be repealed.

But while it is in force and in practice, let not the Dreiners be destroyed, for observing and following the direction thereof as it is in daily practice throughout England, and so great Improvements made thereby: For by a moderate Computation, the Fenns of England are near as much ground, as Holland, Zealand and half Freezland, and as rich a Soil; by which it may be judged whether the Dreining ought to be encouraged, and the Commission approved.

14. Our Adversaries cry out, that their Propriety is invaded by these Dreining, and at the same time they did put in a Bill to do the same thing, and are now doing it by a Commission of Sewers fraudulently assembled, witness a Letter to my Lord of Lindsey, by the same way: The Country (as they have said) needed no Dreining, though 200 Years Records declare the contrary, and yet themselves would be the Dreiners. They forget that the Riot, which destroyed above a Hundred thousand Pounds worth of Houses, Goods, and Corn, and ruined Works, which does destroy all Propriety, and root up the foundation of all Laws and Government. They make a publick Contract in the face of the Country, after Three Years publick Treaty, with the unanimous consent of Thirty two Commissioners, as is in that Decree expressed, most of them the most eminent Lords and Owners, and in presence of Seven or Eight Thousand Commoners, with all their joyful consents; and after Eighty thousand Pounds expended by the Dreiners, their justice allows them to Ravish from us these Lands, and to keep them so many Years. It seems very strange, that Poor men are daily hanged for trifling Robberies, to save their Families from starving, and so great a Robbery as our Riot, to pass for a vertue, to be justified, endeavour to be rewarded instead of punished: And all the Argument for this is, That (they say) it is their own Land: and their Houses builded with the ruines of ours, is their own too, because they say so; by which example, any Man may pull down any Man's House, and call it his own. 'Tis humbly desired that the consequence of this may be fully considered, and then judge who be the Destroyers of all Mens Propriety; when the will and pleasure of a Multitude may overthrow the Decrees of the most ancient Court of Records in England: for such is the Commission of Sewers, and as Beneficial to the Nation as any. If that Riot had been duly punished, this Contest had ended many Years since; but by that omission, Men are encouraged to design any thing that has no relish of Justice; else no Man could hope to be Dreiners of our Lands which we have Paid so dear for, and so well deserved of the Nation; That we most humbly desire such Reparation as this House in their Wisdoms shall think fit, the better to enable us to Repair our ruined Works.

15. The Dreiners do humbly desire that their merit may be duly considered, and the Rioters have their reward, left by their Example no Man may be assured of any Propriety, when Multitudes shall be justified for such an eminent Riot, committed while the Business were in hearing before a Committee of the House of Commons, and when two Justices of Peace were present, who Read the Orders of both Houses, and commanded that Rout to disperse, but could not prevail, but before their faces saw a House of 3000*l.* price pulled down. This well considered, is a high Concern to the Honour of Parliaments, and to the publick Peace of the Nation, as well to every Man's Interest in England, besides the Dreiners, who are much impoverished by this Riot, their Estates for many Years detained, their Works so ruined, as will cost Twenty five Thousand Pounds to repair; and thus all Men discouraged from such publick Works, which deserve a better Approbation than to be neglected now, or formerly destroyed by the Rioters.

16. 'Tis said by some, that we had not the Countries consent. The Commission of Sewers does not direct, that every individual Man should consent under their Hands, neither is any consent requisite, nor directed by the Commission, for that were an impossible Work; for if any two or three froward Men by their refusal may hinder the enriching of the Nation, it would make fruitless the whole intention of the Commission, which is not like the Common Law in other cases; but common sense and constant practice shews that a tacite compliance in them absent, without any dissenting, does declare a general consenting with those many Thousands, who for Three Years treating were constantly present, and with joyful Acclamations consented to the Contract made at Sleeford.

17. Such a Consent as our Adversaries talk of, is as impossible as their discourse of Dreining, without making new Works; as if our Ancestors were so silly, by so many Acts of Parliaments to Impower the Commissioners to Drein, and to forbid the only Way of Dreining. But this is like their beating us out of the Country, destroying our Works, and now complaining to the Parliament, that we did not perform our Contract, by not finishing our Works in the Second Level, when their Riot drove us away; and all they say to amuse Men, is like these when we answer them as those who now sign Papers against the Dreiners, are the same Men, or their Heirs, who pulled down our Houses, and destroyed our Works, and such as now hold our Estates by vertue of that Riot; 'tis to be supposed such Men will sign any thing.

They talk of leaving this Case to be tried in Westminster-Hall, because they know by the 23d. of Henry the 8th. no Court can alter a Decree of Sewers, having the Royal Assent thereto and Enrolled in Chancery, but a Parliament.

The Dreiners do declare, That the Proposals and Resolves of the Committee the Fourth of April, 1662. shall be by them inviolably performed, according to their Consents and Compliance therein; as to remit the Dreining of the Second or Upper Level, from Kime Ea to Lincoln, unto the Lords and Owners as they desired, and we did agree unto, (our 14000. Acres being first settled to us) and they paying us for such Works of ours as they make use of. And also the Dreiners will perform that Agreement with Mr. Dymock, as it is settled.

May 6. 1698.

WILLIAM KILLIGREW, Sole Executor  
of Sir William Killigrew, deceased.

# AN ANSWER TO

A Paper given out the 4th. of May, 1698.

By the Opposers of the Bill.

**For Lindsey-Level.**

